

L. W. K. asks the Utah Labor Commission to review Administrative Law Judge Eblen's decision regarding Mr. K.'s claim for benefits under the Utah Occupational Disease Act ("the Act"; Title 34A, Chapter 3, Utah Code Ann.).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12, Utah Code Ann. §34A-3-102(2), Utah Code Ann. §34A-2-801(3) and Utah Admin. Code R602-2-1.M.

BACKGROUND AND ISSUE PRESENTED

On June 16, 1999, Mr. K. filed an Application For Hearing seeking occupational disease benefits for "pulmonary disease" allegedly resulting from his exposure to fumes and chemicals while employed at Magcorp between October 1973 and June 1998. Ultimately, Judge Eblen appointed Dr. Holmes, a specialist in occupational medicine, to serve as an impartial medical panel to evaluate the medical aspects of Mr. K.'s claim.

Based on an examination of Mr. K. and review of his medical history, Dr. Holmes concluded that Mr. K. suffered from severe chronic obstructive pulmonary disease (COPD) and mild reactive airways disease. Dr. Holmes attributed the COPD to Mr. K.'s long-term and heavy smoking habit and not to his work at Magcorp. On the other hand, Dr. Holmes determined that Mr. K.'s less serious reactive airway disease was significantly aggravated by his exposure to chemical fumes and vapors at Magcorp. Dr. Holmes ultimately concluded that Mr. K. had a 60% permanent whole person impairment from the combined effects of both diseases, of which 6% was attributable to the work-related reactive airway disease.

None of the parties objected to the Dr. Holmes' report. Judge Eblen adopted the report and on that basis ruled that Mr. K.'s COPD was not compensable under the Occupational Disease Act. With respect to Mr. K.'s reactive airway disease, Judge Eblen noted the condition was probably compensable, but declined to award any benefits for the condition on the grounds "the issue was not raised and litigated by the parties" Judge Eblen concluded the matter was not yet ripe for adjudication.

Mr. K.'s motion for review contends he is entitled to permanent partial disability compensation for his 6% permanent whole person impairment arising from his work-related restrictive airway disease. Mr. K. also contends he is entitled to payment of "the appropriate percentage of coverage for medical expenses related to the occupational disease." None of the defendants in this matter have opposed Mr. K.'s motion for review.

DISCUSSION

Subject to certain conditions and limitations, the Utah Occupational Disease Act requires employers, or their insurance carriers, to pay disability compensation and medical benefits to employees who become disabled by reason of an occupational disease.

In this case, Mr. K. has been found to suffer from two diseases, COPD and reactive airway disease. Mr. K.'s COPD is not related to his work at Magcorp and is not compensable under the Occupational Disease Act. However, Mr. K.'s reactive airway disease is work-related and, as such, is compensable under the Act. Magcorp has had a reasonable opportunity to litigate this matter and the Commission sees no reason why benefits should not now be awarded to Mr. K..

The Commission concludes that Mr. K. is entitled to permanent partial disability compensation for a 6% whole person impairment resulting from his work-related reactive airway disease. It appears Mr. K. reached medical stability on May 26, 1999.¹ Mr. K. is therefore entitled to permanent partial disability compensation beginning on that date and continuing thereafter for 18.72 weeks, at the rate of \$310 per week.

Turning to the question of Mr. K.'s right to payment of his expenses for medical care, the Commission notes that, because Mr. K.'s reactive airway disease is a compensable occupational disease, he is entitled to payment of reasonable expenses for medical care necessary to treat that disease. He is not entitled to payment of any medical expense attributable to the treatment of his non-occupational COPD.

Finally, the Commission notes that Judge Eblen found Cigna Insurance, one of Magcorp's workers' compensation insurance carriers, to be liable for payment of Mr. K.'s benefits. Cigna Insurance has not contested that determination. Consequently, the Commission finds Magcorp and Cigna Insurance liable for the benefits awarded to Mr. K. by this decision.

ORDER

The Commission grants Mr. K.'s motion for review and enters the following order in this matter:

Magcorp and Cigna Insurance shall pay 18.72 weeks of permanent partial disability compensation to Mr. K. at the rate of \$310 per week, commencing May 26, 1999, together with interest thereon at the rate of 8% per annum until paid.

Magcorp and Cigna Insurance shall withhold 20% of the compensation and interest otherwise due Mr. K. and pay that amount to Phillip Shell, Mr. K.'s attorney, as a fee for Mr. Shell's services in this matter.

Magcorp and Cigna Insurance shall pay the reasonable expense of medical care necessary to treat Mr. K.'s reactive airway disease, such payment to be made in accordance with the Commission's schedule of medical provider fees.

It is so ordered.

Dated this 30th day of September, 2003.

R. Lee Ellertson, Commissioner

1. Dr. Samuelson, one of Mr. K.'s treating physicians, indicates that Mr. K. reached his "best level of function" by May 26, 1999. The Commission accepts that date as the date Mr. K. achieved medical stability.